IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 332 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHENDRABHAI BALUBHAI PATEL

Appearance:

MR. S.P. DAVE, A.P.P. for Petitioners
MR JF SHAH for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/04/2001

ORAL JUDGEMENT

1. This is a Criminal Revision Application filed by the State of Gujarat and the Collector, Rajpipla, District Narmada under Section 397 of the Criminal Procedure Code, 1973 challenging the judgement and order dated 03.07.2000 recorded by the learned Sessions Judge at Bharuch in Criminal (Forest) Appeal No. 20/1999, under which the learned Sessions Judge allowed the said appeal and quashed the order of the Deputy Conservator of Forest, confiscating the tempo of respondent and directed the release of tempo.

2. The facts may be briefly stated as follows:- As per the case of the petitioner herein, a tempo No. GJ-16-T-9291 was found carrying forest produce on 15.06.1998. The forest Officer seized the produce and the tempo, and after following the process, confiscated the goods and the tempo. Feeling aggrieved by the said order, the respondent herein preferred an appeal before the Sessions Judge at Bharuch who heard the appeal and passed the aforesaid order.

3. Feeling aggrieved by the said judgement and order of the learned Sessions Judge the Revisioner - petitioner have preferred this revision. It has been mainly contended that the learned Sessions Judge has passed the order, impugned, without due application of mind and the order is illegal and perverse and deserves to be set aside. It is therefore prayed that the revision may be allowed and the judgement and order of the learned Sessions Judge impugned in this revision be set-aside. Rule was issued and Mr.J.F. Shah, learned Advocate for the respondent has appeared to contest the revision. I have heard Mr. S.P. Dave, learned Additional Public Prosecutor for the petitioner and Mr. J.F. Shah, for the respondent and have also perused the papers. Mr. S.P. Dave, has argued the matter as Additional Public Prosecutor for the State. He submitted that the forest produce was being carried in the tempo in question were illegal and therefore it was required to be seized and confiscated to the State, and therefore the order of confiscation is legal and valid.

4. Now it is well settled that the vehicle carrying Forest produce illegally can be confiscated but the requirement is that the owner of the vehicle must have knowledge that the vehicle is being used in the said purpose, or atleast there should be some sort of material

showing that the illegal use of the vehicle was known to the owner of the vehicle. The said authorized officer nowhere noticed the said position from the records made available.

5. The learned Sessions Judge has clearly observed in his judgement that there is nothing on record to show that the tempo was hired for illegal transportation of Forest produce with the knowledge or convenience of the owner thereof. This statement of fact could not be dislodged of the learned Additional Public Prosecutor. There is no record to show that the aforesaid finding is illegal. Unless the said finding is disclodged, the Revision cannot be allowed and the order of confiscation of vehicle cannot be restored.

6. On this aspect of the case a decision of NAVINCHANDRA K. CHAVDA Vs. RANGE FOREST OFFICER & ANR reported in 1993 (1) G.L.R. 948 is a relevant consideration. There it has been observed as follows:-

> "On a plain reading of the proviso to Section 61 (B), it clearly appears that registered owner of a motor vehicle has been conferred with a right of being heard before confiscation of his motor vehicle. Conferment of such right cannot be in futility for, sub-sec (2) immediately says that no order of confiscation of a vehicle is to be made, if it is proved to the satisfaction of the Forest Officer that the vehicle was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent if any, and the person in-charge of the vehicle and that each of them has taken all necessary and reasonable precautions against such use. The protection so conferred upon the owner of the vehicle, both under the proviso as well as sub-sec (2) quoted above read together would have to be read referable to the owner or to his agent including person in-charge of the vehicle acting within authority. Now when a motor vehicle is used for a regular and lawful transport of goods, the driver who might be the agent or the person in-charge of such vehicle might divert the vehicle for its unlawful use for carrying forest produce without the knowledge or connivance of the owner and the owner could not be said to have foreseen such an unlawful use. Can in such a case the provision be construed so as to attribute knowledge and connivance of driver to an innocent unwary owner of the vehicle? The

answer would be in the negative, since if an innocent unwary owner is to be attributed driver's knowledge or connivance in carrying forest produce, (in which case he obviously acts beyond his authority) the very provision would be rendered nugatory and perhaps void.

7. This means that the owner of such a vehicle can satisfy the Forest Officer, that the said vehicle was not used for the purpose of carrying forest produce with his knowledge or connivance. Here the respondent - owner of the vehicle has come out with a case that the tempo was not used by his driver for carrying forest produce illegally. This statement of this tempo owner has not at all been controverted by any material on record in accordance with the requirement of Section 61 B (2) of the Act. In that view of the matter, the vehicle could not have been confiscated to State by the competent Forest Officer.

8. Anyway in the present case it is found that there is no material on record to show that the tempo in question was being used for illegal transportation of Forest produce with the knowledge or connivance of the owner and therefore, the confiscation thereof cannot be upheld. Consequently, the learned Sessions Judge cannot be said to have committed any error in allowing the appeal and in setting aside the order of confiscation of said vehicle In the result there is no merit in this Revision Application and therefore it deserves to be dismissed. Accordingly, this Criminal Revision Application is dismissed. Rule is discharged.

(D.P. BUCH,J.)

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